

REMARKS

Forty-two claims were originally filed in the present Application. Claims 1-42 currently stand rejected, and claims 1, 5, 21, and 25 are amended herein. Reconsideration of the Application in view of the foregoing amendments and following remarks is respectfully requested.

Notice Of Draftsman's Patent Drawing Review

In paragraph 2 of the initial Office Action mailed on April 23, 2002, the Examiner requested the Applicants to "note PTO-948 concerning notice of draftsman's patent drawing review." The Examiner further stated that "correction of the noted defect can be deferred until the application is allowed by the examiner." However, as mentioned in the Applicants' prior Response to Office Action, Applicants have never received a PTO-948 or any other document regarding defects in the drawings. Applicants therefore respectfully request the Examiner to provide such documents, so that Applicants may respond in an appropriate manner. In the alternative, Applicants request the Examiner to explicitly indicate that no corrections to the drawings are necessary.

Non-Statutory Double Patenting Rejection

In paragraph 5 of the present Office Action, claims 1-42 are rejected under the judicially-created doctrine of obviousness-type double patenting as being

unpatentable over claims 1-34 of prior U. S. Patent No. 6,453,376 (hereafter, 376). The Applicants respectfully traverse.

In support of the foregoing double-patenting rejections, the Examiner states that “[t]he examiner can ascertain no difference between the claims of the present application and that of ‘376’.” Applicants respectfully refer the Examiner to the language of independent claim 1 from the 376 reference which clearly and unambiguously recites a “resource characterization set including a plurality of resource characterizations including a most mode, a best mode, and a worst mode.”

In contrast, the present Application recites and claims only a single “resource characterization”, as opposed to a “resource characterization set” that includes a “plurality of resource characterizations”. Furthermore, the present Application nowhere claims or anywhere discloses the claimed “most mode”, “best mode”, or “worst mode” of the 376 patent. Applicants therefore submit that the present Application and the 376 reference are directed to substantially different subject matter, and therefore the present Application would not improperly extend the “right to exclude” others with regard to a single inventive concept.

In view of the foregoing remarks, Applicants submit that the Examiner’s rejection under the judicially-created doctrine of obviousness-type double patenting has been adequately addressed, and respectfully request that the rejections be withdrawn so that claims 1-42 may issue in a timely manner.

35 U.S.C. § 102(b)

In paragraph 6 of the Office Action, the Examiner rejects claims 1, 21, and 41-42 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,987,021 to Erickson et al. (hereafter Erickson). The Applicants respectfully traverse these rejections for at least the following reasons.

“For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be *identically* shown in a single reference.” *Diversitech Corp. v. Century Steps, Inc.*, 7 USPQ2d 1315, 1317 (CAFC 1988). The Applicants submit that Erickson fails to identically teach every element of the claims, and therefore does not anticipate the present invention.

Regarding the Examiner’s rejection of independent claims 1 and 21, the Applicants respond to the Examiner’s §102 rejection as if applied to amended independent claims 1 and 21 which have been amended to recite a “*resource characterization including resource requirements required for executing said requested process*” and “*an allocation manager configured to authorize or deny said requested process by referencing said resource characterization*” which are limitations that are not taught or suggested either by the cited references, or by the Examiner’s citations thereto. Applicants submit that the foregoing amendments are supported by claims 5 and 25, as originally filed, and therefore do not necessitate a new search.

Erickson essentially teaches reserving “communication resources” for the utilization of “non-queued” services. However, Applicants submit that the “resources” claimed and disclosed in Erickson are not analogous to those resources claimed and disclosed in the present Application. For example,

Erickson discusses allocating “periodically repeating time slots, distinct carrier frequencies, orthogonal codes, etc.” for use in wireless communication procedures (column 4, lines 48-50). In contrast, the resources referred to by Applicants refer to various system resource characteristics such as bus bandwidth, CPU processing capacity, or system memory capacity for optimally processing isochronous data (Specification, page 10, lines 7-11). Furthermore, Applicants submit that Erickson nowhere mentions or teaches “time-critical isochronous data” that is manipulated by a requested isochronous process, as claimed by Applicants.

In addition, Applicants submit that Erickson nowhere discloses or teaches Applicants’ claimed “resource characterization” which is alternately referred to in the Applicants’ Specification as a “cantaloupe” (page 8, lines 25-28). Furthermore, Erickson nowhere discloses comparing resource values from a “cantaloupe” with currently available system resources to determine whether to “authorize or deny” a particular isochronous process, as claimed by Applicants. For at least the foregoing reasons, Applicants respectfully submit that all elements of their claimed invention are not identically disclosed or taught by Erickson.

With regard to claim 42, “means-plus-function” language is utilized to recite elements and functionality similar to those recited in the other independent claims which are discussed above. Applicants therefore incorporate those remarks by reference with regard to claim 42. In addition, the Courts have frequently held that “means-plus-function” language, such as that of claim 42,

should be construed in light of the Specification. More specifically, means-plus-function claim elements should be *construed to cover the corresponding structure, material or acts described in the specification*, and equivalents thereof.

Applicants respectfully submit that, in light of the substantial differences between the teachings of Erickson and Applicants' invention as disclosed in the Specification, claim 42 is therefore not anticipated or made obvious by the teachings of Erickson. Applicants specifically direct the Examiner's attention to Applicants' discussion of FIGS. 5-7 (Specification, page 10, line 1 through page 14, line 2) which describes in detail the Applicants' claimed "means for referencing" and "means for handling".

Because a rejection under 35 U.S.C. §102 requires that each and every claimed limitation be *identically* taught by a cited reference, and because the Examiner fails to cite Erickson to identically teach or suggest the claimed invention, Applicants respectfully request reconsideration and allowance of independent claims 1, 21, and 41-42 so that the Application may issue in a timely manner.

35 U.S.C. § 103

In paragraph 7 of the Office Action, the Examiner rejects claims 2-20 and 22-40 under 35 U.S.C. § 103(a) as being unpatentable over Erickson in view of U.S. Patent No. 5,574,911 to D'Angelo et al. (hereafter D'Angelo). The Applicants respectfully traverse these rejections for at least the following reasons.

Applicants maintain that the Examiner has failed to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a) which requires that three basic criteria must be met, as set forth in M.P.E.P. §2142:

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations."

The initial burden is therefore on the Examiner to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

Applicants respectfully traverse the Examiner's assertion that modification of the device of Erickson according to the teachings of D'Angelo would produce the claimed invention. Applicants submit that Erickson in combination with D'Angelo fail to teach a substantial number of the claimed elements of the present invention. Furthermore, Applicants also submit that neither Erickson nor D'Angelo contain teachings for combining the cited references to produce the Applicants' claimed invention. The Applicants therefore respectfully submit that the obviousness rejections under 35 U.S.C §103 are improper.

The Examiner concedes that Erickson fails to teach that Applicants' claimed "resource characterization include one or more resource listing and resource usage value that are required for an optimal performance". Applicants concur. The Examiner then points to D'Angelo to purportedly remedy this defect.

D'Angelo essentially teaches attempting to allocate requested resources, and then reducing the amount of requested resources based upon certain specified "control values" if sufficient resources are not available to provide the initially requested allocation amounts (see column 8, lines 26-47).

In contrast, Applicants teach and claim a "resource characterization that includes one or more resource listings and one or more corresponding resource usage values that are required for an *optimal performance* of said requested process." Furthermore, Applicants teach and claims that "*said requested process executes with optimal performance due to guaranteed pre-allocated resources.*" For at least the foregoing reasons, Applicants submit that D'Angelo teaches away from Applicants' invention. A prior art reference which teaches away from the presently claimed invention is "strong evidence of nonobviousness." In re Hedges, 783 F.2d 1038, 228 U.S.P.Q. 2d 685 (Fed.Cir. 1987).

Further regarding the Examiner's rejection of dependent claims 2-20 and 22-40, for at least the reasons that these claims are directly or indirectly dependent from respective independent claims whose limitations are not identically taught or suggested, the limitations of these dependent claims, when viewed through or in combination with the limitations of the respective independent claims, are also not identically taught or suggested. Applicants therefore respectfully request reconsideration and allowance of dependent claims 2-20 and 22-40 so that these claims may issue in a timely manner.

In addition, as discussed in the prior Response to Office Action, the Applicants' originally-filed Application presented forty-two claims for examination,

including four independent claims and thirty-eight dependent claims. In this second Office Action, although the Examiner does not specifically refer to any of Applicants' dependent claims by number, it appears that a substantive examination has been provided only for dependent claims 9 and 29. In other words, thirty-six of the originally-filed claims have received no substantive examination. Specifically, claims 2-8, 10-20, 22-28, and 30-40 have been given *no substantive examination* in either the initial Office Action or the present Office Action.

Applicants therefore respectfully submit that Applicants' originally-filed claims have not received an adequate examination. Applicants also submit that claims 2-8, 10-20, 22-28, and 30-40 contain a substantial number of patentable elements and functionalities, and therefore merit a more thorough and complete examination. Applicants therefore respectfully request the Examiner to issue a new non-final Office Action that specifically and substantively addresses each of Applicants' dependent claims 2-20 and 22-40 (referenced by claim number), or in the alternative, to reconsider and allow claims 1-42 so that the present Application may issue in a timely manner.

For at least the foregoing reasons, the Applicants submit that claims 2-20 and 22-40 are not unpatentable under 35 U.S.C. § 103 over Erickson in view of D'Angelo, and that the rejections under 35 U.S.C. § 103 are thus improper. The Applicants therefore respectfully request reconsideration and withdrawal of the rejections of claims 2-20 and 22-40 under 35 U.S.C. § 103.

Summary

Applicants submit that the foregoing amendments and remarks overcome the Examiner's rejections under 35 U.S.C. §102(b), 35 U.S.C. §103(a), and the judicially-created doctrine of obviousness-type double patenting. Because the cited references, or the Examiner's citations thereto, do not teach or suggest the claimed invention, and in light of the differences between the claimed invention and the cited prior art, Applicants therefore submit that the claimed invention is patentable over the cited art, and respectfully request the Examiner to allow claims 1-42 so that the present Application may issue in a timely manner.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "Version With Markings To Show Changes Made." If there are any questions concerning this amendment, the Examiner is invited to contact the Applicants' undersigned representative at the number provided below.

Respectfully submitted,

Date: 1/9/03

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Version With Markings To Show Changes Made

In The Claims:

1. (Once Amended) A system for effectively utilizing resources in an electronic device, comprising:

a resource characterization coupled to said electronic device, said resource characterization corresponding to a requested process, said resource characterization including resource requirements required for executing said requested process;

an allocation manager configured to [handle] authorize or deny said requested process by referencing said resource characterization; and

a processor coupled to said electronic device for controlling said allocation manager.

5. (Once Amended) The system of claim 1 wherein [said resource characterization includes resource requirements for executing said requested process, and wherein] said allocation manager compares said resource requirements to current available resources, said allocation manager authorizing said requested process only when said resource requirements are less than, or equal to, said current available resources.

21. (Once Amended) A method for effectively utilizing resources in an electronic device, comprising the steps of:

referencing a resource characterization with an allocation manager, said

resource characterization corresponding to a requested process, said

resource characterization including resource requirements required for
executing said requested process;

authorizing or denying [handling] said requested process with said allocation
manager based upon said resource characterization; and

controlling said allocation manager with a processor that is coupled to said
electronic device.

25. (Once Amended) The method of claim 21 wherein [said resource
characterization includes resource requirements for executing said requested
process, and wherein said allocation manager compares said resource
requirements to current available resources,] said allocation manager authorizing
said requested process only when said resource requirements are less than, or
equal to, said current available resources.